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MAR/12/2009/THU 11:20 AM

FAX No.

P. 005/010

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

JOSHUA BERNSTEIN

Plaintiff,

Index No. 02579-09

SUMMONS

-against-

Plaintiff designates  
Westchester County as the  
place of trial

BAYROCK GROUP LLC.

Defendant.

The basis of venue is  
Plaintiff's residence

RECEIVED

FEB 12 2009

TIMOTHY D. IDOM  
COUNTY CLERK  
COUNTY OF WESTCHESTER

**YOU ARE HEREBY SUMMONED** to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within twenty days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

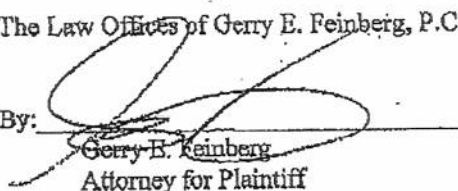
Dated: February 10, 2009

Defendant's Address:

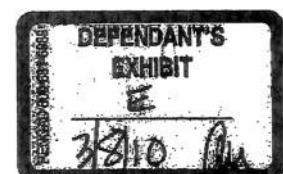
The Law Offices of Gerry E. Feinberg, P.C.

Bayrock Group LLC.  
725 5<sup>th</sup> Ave. **24 TH FLOOR**  
New York, NY 10022

By:

  
Gerry E. Feinberg  
Attorney for Plaintiff  
11 Martine Avenue  
White Plains, NY 10606

Summons



MAR/12/2009/THU 11:20 AM

FAX No.

P. 006/010

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

JOSHUA BERNSTEIN

Index No.

Plaintiff,

COMPLAINT

-against-

RECEIVED

BAYROCK GROUP LLC.

FEB 12 2009

Defendant.

TIMOTHY C. EDEN  
COUNTY CLERK  
COUNTY OF WESTCHESTER

Plaintiff, Joshua Bernstein, by his attorneys, the Law Offices of Gerry B. Feinberg, P.C.,  
alleges as and for his complaint against the defendant as follows:

1. Plaintiff Joshua Bernstein ("Bernstein"), is a resident of the County of Westchester.
2. Upon information believed, defendant Bayrock Group LLC. ("Bayrock"), is a domestic limited liability company with a place for the conduct of business in the City, County and State of New York.
3. Commencing in or about November 2006, and continuing through in or about September 16, 2008, Bernstein was employed by Bayrock.
4. During the time of Bernstein's employment with Bayrock, it was agreed that he would be compensated for the services that he was providing.
5. In or about September, 2008, Bernstein was terminated from his employment with Bayrock.

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6. At the time of Bernstein's termination from his employment with Bayrock, he was entitled to receive as yet unpaid compensation for the services he had provided.

7. Despite due demand therefore Bayrock has refused to pay Bernstein his compensation.

8. Based upon the forgoing, Bernstein has been damaged in an amount to be determined at the time of trial, but at no event no less than \$375,000.

#### SECOND CAUSE OF ACTION

9. Repeats and realleges each every allegation set forth in paragraphs "1" through "8" hereof as if fully set forth at length.

10. At the time of Bernstein's termination from his employment with Bayrock, Bernstein had personal property within his office at Bayrock.

11. Upon his termination from his employment with Bayrock, Bernstein made demands upon Bayrock to return to him his personal property.

12. Despite demands therefore, Bayrock has refused to return to Bernstein his personal property and has deprived him of the use thereof.

13. The conduct of Bayrock in refusing to return to Bernstein his personal property has resulted in conversion of that property.

14. Based upon the forgoing, plaintiff has been damaged in an amount to be determined at the time of the trial but at no event less than \$10,000.

#### THIRD CAUSE OF ACTION

15. Repeat each and every allegation set forth in paragraph "1" through "8" as if fully set forth length.

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16. During the time of Bernstein employment with Bayrock, Bayrock unlawfully withheld compensation, made unlawful deductions from his compensation for expenses which were not properly chargeable to Bernstein and unlawfully failed to pay Bernstein benefits to which he was entitled.

17. The aforesaid conduct by Bayrock was unlawful and in violation of Labor Law Article 6.

18. The aforesaid conduct was willful.

19. Based upon the forgoing, Plaintiff is entitled to damages for violation of Labor Law Article 6, including treble damages and attorney fees pursuant to §198 of the Labor Law.

WHEREFORE, plaintiff demands judgment against defendant:

(i) In respect of the first cause of action, for such damages as are established at the time of trial, but in no event less than \$375,000.;

(ii) In respect of the second cause of action, for such damages as are established at the time of trial, but in no event less than \$10,000.;

(iii) In respect of the third cause of action, for such damages as are established at the time of trial for violation of the Labor Law, including treble damages and attorneys fees.;

together with interest thereon as allowed by law and such at further relief as this court deems just and proper, including the costs and disbursements incurred herein. .



A handwritten mark, possibly a signature or initials, consisting of a large, stylized 'C' or 'G' shape with a loop at the bottom right.

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

JODY KRISS, for himself and derivatively on behalf of the  
Delaware limited liability companies Bayrock Spring Street  
LLC, and Bayrock Whitestone LLC, the Arizona limited liability  
company Bayrock Camelback LLC, the Florida limited liability  
companies Bayrock Merrimac LLC, and Bayrock Ocean Club  
LLC, and the New York limited liability company Bayrock  
Group LLC,

Plaintiff,

v.

BAYROCK GROUP LLC; RIF INTERNATIONAL GROUP,  
INC.; TEVFIK ARIF; JULIUS SCHWARZ; MEL DOGAN;  
DOGAN & ASSOCIATES; 2027 EMMON AVE LLC; FELIX  
SATTER (aka FELIX SATER); VICTORIA SATER; ALEX  
SALOMON; ALEX SALOMON & CO., PC; JOSEPH  
BENCIVENGA; BUENA VISTA ALARGA LLC; BAYROCK  
SPRING STREET LLC; BAYROCK WHITESTONE LLC;  
BAYROCK HOLDINGS LLC; BAYROCK NATURAL  
STONE LLC; BAYROCK SAPIR ORGANIZATION LLC; 246  
SPRING STREET HOLDINGS II LLC; BAYROCK/SAPIR  
ORGANIZATION HOLDINGS LLC; BAYROCK/SAPIR  
ORGANIZATION REALTY LLC; 151-45 SIXTH ROAD  
WHITESTONE PARTNERS LLC; CAMELBACK  
DEVELOPMENT PARTNERS LLC; STILLMAN BAYROCK  
MERRIMAC LLC; SB HOTEL ASSOCIATES LLC; 550  
SEABREEZE DEVELOPMENT LLC,

True Defendants,

And

BAYROCK GROUP LLC; BAYROCK WHITESTONE LLC;  
BAYROCK CAMELBACK LLC; BAYROCK MERRIMAC  
LLC; BAYROCK OCEAN CLUB LLC; BAYROCK SPRING  
STREET LLC,

Nominal Defendants.

C.A. No.:  
4154-VCS

**FINAL ORDER**

IT IS HEREBY ORDERED, this 19<sup>th</sup> day of February, 2010 for the reasons set forth in the September 16, 2009 bench ruling of the Court, that:

1. As to all Defendants, all claims pled in the Complaint are dismissed without prejudice for lack of subject matter jurisdiction, pursuant to Court of Chancery Rule 12(b)(1).
2. As to all Non-Resident Defendants named in the Complaint as defined in the Bayrock Defendants' Opening Brief, all claims pled in the Complaint are dismissed without prejudice for lack of personal jurisdiction, pursuant to Court of Chancery Rule 12(b)(2).
3. As to the Resident Defendants named in the Complaint as defined in the Bayrock Defendants' Opening Brief, all claims pled in the Complaint are dismissed without prejudice for failure to join indispensable parties, pursuant to Rule 12(b)(7).

Plaintiff's Complaint is dismissed without prejudice, as opposed to with prejudice, solely so that the doctrine of *res judicata* does not preclude Plaintiff the opportunity to bring his claims before an arbitrator or, if certain claims are held not to be arbitrable, in a forum, such as the New York state courts, which can appropriately exercise jurisdiction over all Defendants and which is convenient. Of course, the reasons for dismissing this Complaint will retain their force into the future, and therefore an attempt by Plaintiff to bring these claims again in this Court will result in dismissal for the same reasons stated in the Court's bench ruling and which are summarized in this order.

/s/ Leo E. Strine, Jr.  
Vice Chancellor



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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF WESTCHESTER

JOSHUA BERNSTEIN,  
Plaintiff,

-against-  
BAYROCK GROUP LLC,  
Defendant.

Index No. 02579/09

11 Martine Avenue  
White Plains, New York

March 5, 2010  
11:15 a.m.

Deposition of JULIUS R. SCHWARZ,  
held at the Law Offices of Gerry E. Feinberg,  
pursuant to court order, before Barbara  
Driscoll, a Notary Public of the State of  
New York.

ELLEN GRAUER COURT REPORTING CO. LLC  
126 East 56th Street, Fifth Floor  
New York, New York 10022  
212-750-6434  
Ref: 92828

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## I N D E X

WITNESS	EXAMINATION	PAGE
JULIUS R. SCHWARZ	MR. OBERLANDER	6

## E X H I B I T S

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Exhibit 3	Employment agreement of Jody Kriss signed and bearing witness signatures	46
Exhibit 4	Employment agreement of Felix Sater	52
Exhibit 5	Operating agreement of Bayrock Group LLC agreement	58
Exhibit 6	Employment agreement dated June 29, 2004 between Bayrock Group and Jody Kriss	81
Exhibit 7	Employment agreement dated May 17 between Bo Woodring and Bayrock Group LLC	96
Exhibit 8	Separation release and consulting agreement	98

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## A P P E A R A N C E S:

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and

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Montauk, New York 11954

AKERMAN SENTERFITT LLP

Attorneys for Defendant

335 Madison Avenue, Suite 2600

New York, New York 10017-4636

BY: MARTIN DOMB, ESQ.

## ALSO PRESENT:

Joshua Bernstein

Neil Pasmanik, Esq.

## E X H I B I T S (Cont'd)

PLAINTIFF'S	DESCRIPTION	FOR I.D.
Exhibit 9	Operating agreement of Bayrock Camelback	104
Exhibit 10	Loan agreement dated May 18, 2007	118

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## S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND AGREED, by and between the attorneys for the respective parties herein, that filing and sealing be and the same are hereby waived.

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form of the question, shall be reserved to the time of the trial.

IT IS FURTHER STIPULATED AND AGREED that the within deposition may be signed and sworn to before any officer authorized to administer an oath, with the same force and effect as if signed and sworn to before the officer before whom the within deposition was taken.

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JULIUS R. SCHWARZ, called as a witness, having been first duly sworn by the Notary Public (Barbara Driscoll), was examined and testified as follows:

## EXAMINATION BY

MR. OBERLANDER:

Q. Please state your name.

A. Julius R. Schwarz.

Q. Please state your home address.

A. 22 Dogwood Lane, Tenafly, New Jersey 07670.

MR. DOMB: Mr. Bernstein, are you recording this?

MR. OBERLANDER: Everything is on the record.

MR. DOMB: I am asking --

MR. OBERLANDER: Are you asking me? I said no, I am not recording it.

MR. FEINBERG: Josh has a phone sitting on the desk, so he is asking if you're recording it. Are you recording it?

MR. BERNSTEIN: Should I?

MR. DOMB: I want to make sure. We have one official record and that is the court

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SCHWARZ

reporter.

MR. OBERLANDER: Are you objecting if he is --

MR. DOMB: I asked a question. Just start your deposition.

MR. OBERLANDER: I assure you I am not recording it.

Q. Mr. Schwarz, would you mind occasionally if I call you Julius? Would you find that offensive in any way?

A. Not at all.

Q. My name is Fred Oberlander, I represent Mr. Bernstein. This is a deposition. You know you're under oath. You have just been sworn in.

Have you ever given a deposition before in any civil action?

A. Yes.

Q. Are you generally familiar; for example, do you understand that if there is any question that you don't understand all or part of, you have to say so out loud? I don't want you to answer a question unless you're sure you understand it and I won't be able to tell from gestures, so you have to say out loud, I don't

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SCHWARZ

understand or some other words of your choice.

A. I understand.

Q. Are you on any kind of medication that might interfere with your ability to answer and process the information to the best of your ability?

A. No.

Q. Did you prepare for this deposition by reviewing any documents?

A. I reviewed some e-mails yesterday.

Q. Did you discuss the deposition before now with your attorney or any attorney appearing here or representing you?

A. Yes.

Q. Did you discuss it with anybody else other than an attorney?

A. I told my wife I was having --

Q. No. I mean discuss the substance or anything that you plan to say or do?

A. No.

Q. Did you bring anything with you today in response to any request to produce any documents?

A. I wasn't aware of any request --

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SCHWARZ

interest. It is on the front page. Please look at that at the bottom. This is Exhibit 2.

A. Yes. I see the name membership interest in paragraph 5.

Q. When you use the term economic interest, do you mean what membership interest means there or something different?

A. I mean the understanding was we were receiving economic interests and Mr. Arif would control his company.

Q. The understanding between who?

A. The understanding between Mr. Arif and myself, Mr. Kriss, Mr. Sater.

Q. How do you know what Mr. Arif understood?

A. We had discussions.

Q. How do you know what Mr. Kriss understood?

A. We had discussions.

Q. How do you know what Mr. Sater understood?

A. We had discussions.

Q. Did Mr. Sater have an employment agreement with the company?

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SCHWARZ

commitments could you make? Could you enter into contracts that called for other performance in the payment of money?

A. There were limitations. I don't remember exactly. Some of them were -- one limitation was employee compensation.

Q. What was that limitation?

A. That was in the resolution giving me the power.

Q. But was the limitation that you could hire -- you could not?

A. I could not.

Q. Could you fire?

A. I believe I could, yes.

Q. Jody Kriss, what authority did he have in the company, by which I mean the same as I just asked you?

A. I would say during his term of employment, it was the same because it was pursuant to the same resolution.

Q. So he couldn't hire?

A. I don't recall if -- I believe you needed -- yes. I believe consent was required to hire and to change compensation of employees.

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SCHWARZ

A. He did.

Q. Did you draft part of it?

A. Yes.

Q. Did Mr. Kriss have an employment agreement?

A. Yes.

Q. Did you draft part of that?

A. Yes.

MR. OBERLANDER: Off the record.

(Discussion off the record.)

Q. In your capacity as executive vice president, what authority did you have to bind the company?

A. I had authority to sign for the company on transactional matters.

Q. Was there a dollar limit?

MR. DOMB: Did you finish your answer?

MR. OBERLANDER: I thought he was done.

THE WITNESS: I finished.

Q. Was there a dollar limit?

A. Under the resolution that gave me that authority, I do not believe I did. I don't believe there was a dollar limit.

Q. Beyond signing for things, what other

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SCHWARZ

Q. Consent of who?

A. Consent would be of Mr. Arif.

Q. You earlier testified that when you came to Bayrock, that Jody Kriss was senior vice president?

A. Yes, to my knowledge.

Q. To your knowledge, did he retain that position during the course of his work there?

A. Once I started, I believe his title was director of finance.

I also believe he did sign as senior vice president. I don't recall if it was -- I believe he was senior vice president and director of finance during the entire period.

Q. Felix Sater, was Felix Sater ever employed by Bayrock Group LLC?

A. Yes.

Q. In what capacity?

A. He was tasked with trying to source deals and transactions.

Q. Did he have a title?

A. No.

Q. We can break if you need to take a phone call.

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